

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 950149-TC
proceedings against North) ORDER NO. PSC-95-0349-FOF-TC
American Intelcom, Inc. for) ISSUED: March 14, 1995
violation of Commission rules)
and orders.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER TO SHOW CAUSE

BY THE COMMISSION:

I. BACKGROUND

North American Intelcom, Inc. (NAI) received a certificate to provide pay telephone service on March 22, 1990. In 1991, our Division of Consumer Affairs began receiving complaints from inmates at various correctional facilities in Florida about pay telephones operated by NAI. The complaints included allegations that calls were being overtimed, disconnected prematurely, overcharged, or that calls simply could not be completed.

Test calls by our staff engineers uncovered overtiming and overbilling at two facilities served by NAI, New River Correctional Institute (NRCI) and Apalachee Correctional Institute (ACI). Docket Number 930416-TC was opened to address these complaints and on July 26, 1993, we issued Order Number PSC-93-1083-FOF-TC, requiring NAI to show cause why it should not be fined for charging in excess of the rate cap for pay telephone service provided at confinement facilities, as established in Order Number 24101, issued February 14, 1991. We also required NAI to refund all monies incorrectly collected from the customers who were billed for collect telephone calls. NAI responded on August 16, 1993 and requested a hearing.

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FPSC-RECORDS/REPORTING

In 1993, we began receiving new complaints about the deletion of the voice window on collect calls. Inmates are only allowed to make collect calls and that voice window allowed inmates to identify themselves to the called party.

In 1994, we continued to investigate this company and continued to receive complaints. In an attempt to resolve this matter, our staff met with NAI on April 7, 1994. At that time, NAI advised that the pay telephones at NRCI were not on individual pay telephone access lines as called for in Rule 25-24.515(9), Florida Administrative Code, and Order Number 14529, issued July 1, 1985.

On July 20, 1994, NAI made an offer of settlement. The settlement offer provided that NAI would refund a portion of its overcharges amounting to \$250,000 by way of a reduced rate for future calls from the confinement facilities. Second, NAI proposed to make a cash payment of remaining monies not refunded if NAI is not awarded a contract to provide pay telephone service by the Florida Department of Corrections (DOC) after February 1995. Finally, NAI proposed that no fine be imposed.

We rejected the settlement offer by Order Number PSC-94-1206-FOF-TC, issued October 3, 1994. The proposed settlement did not refund all of the overcharged amounts or any interest and NAI's proposal that no fine be imposed did not address the apparent continued violations.

On January 30, 1995, a prehearing conference was held in Docket Number 930416-TC. The prehearing officer ruled that issues not included in the original show cause order (Order Number PSC-93-1083-FOF-TC) could not be included in that hearing and those issues should be brought before the Commission to determine whether another show cause order is appropriate. Therefore, this docket was opened. We issue this Order to address those issues not addressed in Docket No. 930416-TC and new complaints against NAI.

II. VIOLATIONS

A. Violation of Order Number 25030

In 1991, NAI submitted a petition requesting a waiver of portions of 25-24.515, Florida Administrative Code, for its instruments in penal institutions. The petition proposed that NAI be allowed to block access to 911 service, directory assistance,

and some locally available interexchange carriers. NAI also requested that its pay telephones not be required to accept credit card or coin calls, and requested that it be allowed to limit the duration of calls.

By Order Number 25030, issued September 9, 1991, we granted NAI's requests with some limitations. First, the waiver applied only to pay telephones located in penal institutions. Additionally, since access to interexchange carriers was restricted, until the new end-user rate cap set by Order Number 24101 went into effect, NAI was to charge no more than the AT&T direct distance dialing time of day rates plus operator charges for intraLATA calls.

Both complaints by customers and our investigation have indicated repeated violations of Order Number 25030 by NAI. On September 16, 1992, DOC sent NAI a letter advising that it had completed an audit on an a billing sent to them by a customer that confirms overcharges. DOC instructed NAI to refund that customer \$10.78, to refund all other overbillings, and ensure that future billings not exceed AT&T rates.

We have received complaints from the families of inmates regarding the origination of the collect calls. For example, an inmate housed at ACI in Sneads called his home in Sneads. This should be a local call. The billing detail showed the call originating in Madison, which is not only the incorrect origination point but results in the called party being billed at toll rates rather than local. Also, the family of an inmate housed at NRCI in Stark received bills that showed the calls originated from Jasper and Sneads. DOC received similar complaints. In a September 16, 1992 letter, DOC noted an audit that found that eight calls on one bill that were shown originating from Jackson Correctional Institute when they actually originated from NRCI. NAI responded, on September 29, 1992, that all problems had been corrected. However, we received complaints from the same complainant about bills from November 13, 1992 through April 8, 1993 that indicated the problem continued.

Our engineers began testing pay telephone service at various state facilities in October, 1992. Calls from NRCI and ACI were either overtimed, overcharged or both. For example, a test call from ACI was timed by our staff to last 1 minute and 40 seconds. The cost of that call should have been \$1.50. NAI billed the call as a three minute call and charged \$2.45. NAI responded that it had installed new equipment and the programming of the new equipment led to the errors. NAI explained that the timing errors were an equipment related problem in the process of being

corrected. The overbilling issue resulted from an incorrect programming command. NAI pointed out that not only had this incorrect programming command occurred at NRCI and ACI but also at four other facilities. NAI admits to overcharging customers at least \$394,318.

By billing calls with an incorrect origination point, overtiming calls, and overbilling calls, NAI charged rates in excess of those allowed by Order Number 25030.

B. Violation of Rule 25-24.630(1)(a), Florida Administrative Code

Rule 25-24.630(1)(a), Florida Administrative Code, states that an operator service company shall charge and bill end-users no more than the Commission-approved rate for intrastate calls. Our approved rate for intrastate calls in this case would be the rates addressed in both Order Number 25030 and Order Number 24101. Order Number 25030 allows NAI to charge no more than the AT&T direct distance dialing time-of-day rates plus operator charges for interLATA calls.

We have received numerous complaints from customers who claim they were overcharged by NAI. We also have evidence from DOC that indicates overcharges.

We note, for example, a recent billing detail dated December 10, 1994. A 15 minute night call is being billed at \$3.08. This call should have been billed at \$3.00, according to rates established by Order Number 25030 and Order Number 24101. Although, this call is only being overbilled by \$.08, it is still a violation of Order Number 25030 and Order Number 24101.

By charging in excess of the rates established by Order Number 25030 and Order Number 24101, NAI is in apparent violation of Rule 25-24.630(1)(a), Florida Administrative Code.

C. Violation of Rule 25-24.515(10), Florida Administrative Code

Rule 25-24.515(10), Florida Administrative Code, states the charge for calls may not exceed the rates shown in the local exchange company (LEC) pay telephone access tariff.

In September 1994, our staff engineers placed more test calls from various facilities serviced by NAI. While some of the timing problems appeared to be corrected, the rates that were being applied for calls from Bristol to Tallahassee were excessive.

Effective December 1, 1993, Tallahassee became part of Bristol's local calling area. A collect call from a pay telephone should, according to the LEC tariff, cost \$1.50. The billing detail for these test calls shows each of the fifteen test calls billed at \$1.74.

In addition, we received a consumer complaint on December 16, 1994. The billing detail, dated November 22, 1994, shows collect calls from Bristol to Tallahassee in which toll rates were applied. The complainant was charged \$36.15 for ten calls that should not have amounted, according to the LEC tariff, to any more than \$15.00. This is almost a full year after Tallahassee became part of Bristol's local calling area.

By charging in excess of rates as stated in the LEC tariff, NAI is in apparent violation of Rule 25-24.515(10), Florida Administrative Code.

D. Violation of Rule 25-24.630(1)(f), Florida Administrative Code

Rule 25-24.630(1)(f), Florida Administrative Code, states that an operator service provider shall charge for only conversation time as rounded according to the company tariffs. Conversation time is defined as the time in which two way communication is possible.

In accordance with Orders Numbers 25030 and 24101, a limited time duration of 15 minutes may be placed on all calls made from pay telephone stations. According to NAI, the company is cutting off calls at 15 minutes. However, many billing details we received via complaints show billing for calls in excess of 15 minutes. For example, a complaint received on April 18, 1994, shows that out of 63 calls received 42 calls were billed in excess of 15 minutes.

On February 14 and 15, 1994, our staff engineer placed three test calls from NRCI in Stark. One call was made on February 14, 1994, and no error was found in timing. Two calls were made on February 15, 1994, and each call was overtimed by 1 minute.

During a meeting on April 7, 1994, our staff learned that NAI had been incorrectly timing calls, resulting in a one minute overcharge per call in some cases. The company was routing every call to its validation database in Texas and billing customers for the time it takes for the call to be validated prior to positive acceptance. This is a violation of Rule 25-24-630(1)(f) because two way communication is impossible during this validation process.

NAI's response to this type of complaint, dated May 2, 1994, is inadequate. In fact, in that response, NAI indicated that it did charge customers for the validation time. This is a violation of Rule 25-24.630(1)(f), Florida Administrative Code.

Billing details also indicate that NAI has charged customers for two telephone calls at the same time. Two telephone calls could not originate from the same instrument at one time. It appears that NAI is billing for time when two way conversation is not possible.

By charging for time when two way conversation is not possible, NAI is in apparent violation of Rule 25-24.630(1)(f), Florida Administrative Code.

E. Violation of Rule 25-24.630(2)(b), Florida Administrative Code

Rule 25-24.630(2)(b), Florida Administrative Code, states an operator service provider shall not bill for any collect calls that have not been affirmatively accepted by a person receiving the call regardless of whether the call was processed by a live or automated operator.

We have encountered two separate types of complaints relating to this Rule. The first complaint is that the person billed for the call did not accept it. We have received a complaint in which the complainant states she did not accept any of the more than 105 calls billed to her home in a ten day period. In fact, she says she does not know anyone in Lawtey Correctional Facility, where the calls originated, and says these calls were placed to her voice mail box. A voice mail box cannot positively accept a collect call.

The second type of complaint is that NAI's automated system no longer has a voice window which allows the caller to be identified before a decision to accept the collect call is made. Our staff wrote to NAI about this and was told the deletion was at the direction of DOC and that NAI deferred to DOC's response to this problem. In its letter, DOC explained that the deletion was due to inmates misusing the voice window to make harassing or threatening calls. We are unaware of any complaint regarding harassment of callers while an inmate states his or her name in the voice window. Under Section 364.01, Florida Statutes, this Commission has exclusive jurisdiction over telecommunications issues, not DOC. We believe a customer cannot affirmatively accept a collect call if he or she does not know the identity of the caller.

By charging for calls that were not accepted and deleting the voice window and not identifying the caller, NAI is violating Rule 25-24.630(2)(b), Florida Administrative Code.

F. Violation of Rule 25-24.515(9), Florida Administrative Code and Order Number 14529

Rule 25-24.515(9), Florida Administrative Code, requires that pay telephones be connected in accordance with the local exchange company tariff. In Order Number 14529, issued July 1, 1985, we stated, "We find it is also in the public interest that we require one PATS instrument per coin access line. We reach this conclusion in an effort to avoid a payphone customer getting a busy signal when he attempts to use the payphone when an emergency arises. The possibility of getting a busy signal increases when a line is shared by several PATS instruments." We interpret this Rule and Order to mean that one pay telephone access line is required for each pay telephone.

On April 7, 1994, our staff learned that the pay telephones at NRCI were not on individual pay telephone access lines as required. This order and rule are applicable until this or any other company comes before this Commission to ask for waiver. A complaint, received February 8, 1994, illustrates what can happen when the instruments are not configured in accordance with the Commission Rules and Orders. The complainant states an inmate had to dial the telephone number for the party he was calling over one hundred and fifteen times in a three day period (December 23, 1993 - December 26, 1993) before he was able to complete the call. NAI claimed the busy signal was caused by heavy holiday calling and suggested we inquire with the local exchange company. Our staff did and found no indication of overflows during that time frame. The information provided to our staff indicates that at the 18 facilities served by NAI there are 335 pay telephone instruments and 144 pay telephone access lines.

By connecting more than one pay telephone instrument per pay telephone access line, NAI is in violation of Rule 25-24.515(9), Florida Administrative Code and Order Number 14529.

G. Violation of Rule 25-24.470, Florida Administrative Code

Rule 25-24.470, Florida Administrative Code, states no person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission.

On February 3, 1995, we received the direct testimony of Edward J. Taylor, Jr. an employee of NAI. This testimony is intended for use in the hearing in Docket Number 930416-TC. In that testimony, Mr. Taylor states, "NAI is an experienced long distance service provider." Mr. Taylor further states, "IntraLATA calls are delivered to the LEC over a PAL, and interLATA calls are routed to NAI's switch in Jacksonville." In addition, the tariff of NAI's billing agent, OAN Services of Florida, Inc. d/b/a Operator Assistance Network, lists NAI as an interexchange carrier.

NAI is an authorized pay telephone provider but it appears that NAI is not using the store and forward features of pay telephones. The company appears to be operating as an interexchange carrier in violation of Rule 25-24.470, Florida Administrative Code.

III. CONCLUSION

As discussed in Section II, above, NAI appears to be in violation of several of our Rules and Orders. Accordingly, we order NAI to show cause why it should not be fined or have its certificate cancelled for violation of each of the rules and orders cited in Section II of this Order. NAI should also show cause why it should not be required to refund, with interest in accordance with Rule 25-4.114, Florida Administrative Code, all monies incorrectly collected from the payers of collect calls. NAI must respond to this Order to Show Cause by the date set forth in the Notice of Further Proceedings or Judicial Review section of this Order. NAI's response must contain specific allegations of fact and law. If NAI fails to respond in a timely manner, such failure shall constitute an admission of the alleged violations and the waiver of any right to a hearing.

It is, therefore,

ORDERED by the Florida Public Service Commission that North American Intelcom, Inc. is ordered to show cause, in writing, why it should not be fined or have its certificate cancelled for violation of the rules and orders discussed in the body of this Order. It is further

ORDERED that North American Intelcom, Inc. must respond by the date set forth in the Notice of Further Proceedings or Judicial Review section of this Order. It is further

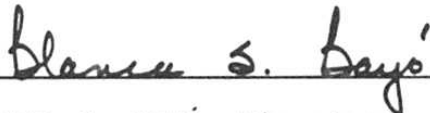
ORDERED that North American Intelcom, Inc.'s responses must contain specific allegations of fact and law. It is further

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ORDERED that, should North American Intelcom, Inc. fail to file an appropriate written response by the date set forth in the Notice of Further Proceedings or Judicial Review, such failure shall constitute an admission of the alleged violations and a waiver of any right to a hearing. It is further

ORDERED that this docket shall remain open pending resolution of the show cause process.

By ORDER of the Florida Public Service Commission, this 14th day of March, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

LMB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 3, 1995.

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Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.